

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PIM SHIH,	:	
	:	
Plaintiff,	:	23 Civ. 8035 (JPC) (RWL)
	:	
-v-	:	<u>ORDER ADOPTING</u>
	:	<u>REPORT AND</u>
THE BROADWAY LEAGUE,	:	<u>RECOMMENDATION</u>
	:	
Defendant.	:	
	:	
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JOHN P. CRONAN, United States District Judge:

Plaintiff Pim Shih brings this action against Defendant The Broadway League alleging racial and religious discrimination, retaliation, breach of implied contract, intentional infliction of emotional distress, negligent infliction of emotional distress, defamation, and tortious interference with prospective economic advantage. Dkt. 1. On August 20, 2024, the Honorable Robert W. Lehrburger issued a Report and Recommendation, recommending that this Court grant Defendant’s motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to allege sufficient facts to state a claim of entitlement to relief. Dkt. 22 (“R&R”). More specifically, Judge Lehrburger recommended dismissal with prejudice of Counts I, II, IV, and VIII, and dismissal without prejudice of Counts III, V, VI, VII, and IX, with leave to amend those five Counts. *Id.* at 31.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge” in a Report and Recommendation. 28 U.S.C. § 636(b)(1)(C). If a party submits a timely objection to any part of the magistrate judge’s disposition, the district court will conduct a *de novo* review of the contested section. Fed. R. Civ.

P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). If no objections are made, the Court reviews the Report and Recommendation for clear error. *See, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

The Report and Recommendation, citing both Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), advised the parties that they had fourteen days from service of the Report and Recommendation to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. R&R at 31. The Report and Recommendation was electronically served on the parties on August 20, 2024. No objections have been filed and the time for making any objections has passed. The parties have therefore waived the right to object to the Report and Recommendation or to obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *see also Caidor v. Onondaga Cnty.*, 517 F.3d 601 (2d Cir. 2008).

Notwithstanding this waiver, the Court has conducted a *de novo* review of the Report and Recommendation, and finds it to be well reasoned and its conclusions well founded. Accordingly, the Court adopts the Report and Recommendation in its entirety and dismisses this case pursuant to Rule 12(b)(6) for failure to state a claim. Counts I, II, IV, and VIII are dismissed with prejudice; Counts III, V, VI, VII, and IX are dismissed without prejudice and with leave to amend.

The Clerk of Court is respectfully directed to terminate the motion pending at Docket Number 17. If Plaintiff decides to file an Amended Complaint, he must file it within thirty days of the date of this Order. Failure to file an Amended Complaint by that deadline, and without showing good cause to excuse such failure in advance of the deadline, will result in the dismissal of all Plaintiff's claims with prejudice, at which point the Court will direct the Clerk of Court to enter judgment in Defendant's favor and to close the case.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: September 4, 2024
New York, New York

A handwritten signature in black ink, appearing to read "John P. Cronan", written over a horizontal line.

JOHN P. CRONAN
United States District Judge